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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Jose Breceda, individually, ) No. CV-08-02035-PHX-LOA  
10 Plaintiff, ) **ORDER**  
11 vs. )  
12 Upgrade Concrete & Decking, LLC, an )  
13 Arizona limited liability corporation;) Wyatt Wade Seward, Michelle Sue )  
14 Seward, )  
15 Defendants. )

16 This matter arises upon the Court's review of the file which indicates that  
17 no activity has occurred therein since the filing on December 3, 2008 of the Returned  
18 Executed Summonses upon Defendants Michelle Sue Seward and Wyatt Wade Seward  
19 on December 4, 2008. (docket ## 12 and 13) On December 1, 2008, Plaintiff expressly  
20 consented in writing to magistrate-judge jurisdiction pursuant to 28 U.S.C. 636(c).  
21 (docket #10) No defendant has appeared in this action.

22 The docket reflects that on December 3, 2008, Plaintiff filed Affidavits of  
23 Service of the Summons and Complaint upon Wyatt Wade Seward and Michelle Sue  
24 Seward on November 13, 2008. (docket ## 12 and 13) The Court's docket does not  
25 reflect an Affidavit of Service upon Upgrade Concrete & Decking, LLC. On August 12,  
26 2009, the undersigned ordered Plaintiff to continue the prosecution of his claim. The  
27 Court further instructed Plaintiff if the case has settled, to file a Notice of Dismissal and if  
28 the case remained active and the time for Defendants to Answer or otherwise plead has

1 expired to file an Application for Entry of Default with the clerk pursuant to Rule 55(a),  
2 FED.R.CIV.P., and seek a default judgment pursuant to Rule 55(b)(1), Fed.R.Civ.P. No  
3 objection or response has been filed to the Court's August 12, 2009 order.

4 Plaintiff was warned if he failed to comply with Rule 55 by **5:00 p.m. on**  
5 **August 26, 2009**, the Court will likely dismiss the Complaint without prejudice for lack  
6 of prosecution pursuant to Rule 41(b), Fed.R.Civ.P. To date, Plaintiff has failed to  
7 respond or comply with the Court's August 12, 2009 Order. (docket #14)

8 Dismissal of a complaint for failure to comply with the procedural rules of  
9 the court is within the court's discretion. *Original Ballet Russe, Ltd. v. Ballet Theatre,*  
10 *Inc.*, 133 F.2d 187, 188 (2<sup>nd</sup> Cir. 1943); *Sergio Bautista et al. v. Los Angeles County*, 216  
11 F.3d 837 (9<sup>th</sup> Cir. 2000). Moreover, district courts have the inherent power to control  
12 their dockets and in the exercise of that power may impose sanctions including, where  
13 appropriate, dismissal of a case. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir.  
14 1992). "In determining whether to dismiss a case for failure to comply with a court  
15 order, district courts must weigh five factors: (1) the public interest in expeditious  
16 resolution of litigation; (2) the court's need to manage the docket; (3) the risk of prejudice  
17 to the defendant; (4) the public policy favoring disposition of cases on their merits; and  
18 (5) the availability of less drastic alternatives." *Id.* at 1260-61.

19 After considering and weighing all five factors to determine if dismissal is  
20 appropriate for Plaintiff's failure to comply with Rule 41(b), Fed.R.Civ.P. and the Court's  
21 August 12, 2009 Order, the Court concludes dismissal without prejudice of the Plaintiff's  
22 Complaint is appropriate and just under the circumstances of this case.

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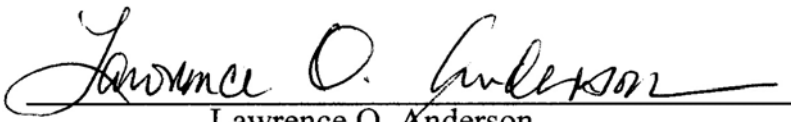
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Accordingly,

**IT IS ORDERED** that Plaintiff's Complaint is hereby dismissed without  
prejudice.

Dated this 28<sup>th</sup> day of August, 2009.

  
Lawrence O. Anderson  
United States Magistrate Judge